IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

Crl.MC.No. 3330 of 2006-A

CC.129/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT -I, ALAPPUZHA

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PETITIONER:

MANIYAN, CHEMPAKASSERY HOUSE,
KAITHAVANA WARD P.O., SANATHANAPURAM,
ALAPPUZHA.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR MR. K.C.SANTHOSHKUMAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26-10-2006, THE COURT ON 11-4-2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO. 5621/2006 IN CRL.M.C.NO. 3330/2006

DISMISSED.

11-4-2007 **SD./-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.3330 of 2006

DATED THIS THE 11TH DAY OF APRIL 2007

ORDER

The petitioner, who is the first accused in C.C.No.951/2004 in the Court of Judicial First Class Magistrate-I, Alappuzha on the basis of a private complaint with respect to the offences under Sections 324,326,341,506(ii), 294(b) read with section 34 I.P.C., has sought for setting aside the order of the court below clubbing together C.C.No. 129/2003 taken into file on the basis of the police charge and C.C.No.951/2004. It is submitted that the petitioner was not an accused in C.C.No.129/2003 with respect to the offence under Section 324 read with Section 34 I.P.C. against two persons Satheesan and Ajith. It is while the proceedings in C.C.No.129/2003 was being tried that C.C.No.951/2004 was taken into file on the basis of the complaint filed that the de facto complainant in C.C.No.129/2003 was taken into file. The petitioner has also produced copy of the F.I.S. in C.C.No.129/2003 and the copy of

the private complaint in C.C.NO.951/2004. It is submitted that the allegations in both matters are totally different and hence the order of the court below clubbing together both the cases and making the petitioner herein as the third accused in C.C.No.129/2003 is illegal and against the law laid down by the Supreme Court. Section 210 Cr.P.C. cannot be invoked in the circumstances as the final report has been filed and the trial in C.C.No.129/2003 has already begun. The petitioner is seriously prejudiced as he is not having the copy of the statements of the witnesses who will be deposing against him. The revision petitioner has also produced the copy of the proceedings paper in both the cases.

2. It is seen that PW1 in C.C.No.129/2003 has been examined in part and it is thereafter fresh charge has been framed invoking Section 210 Cr.P.C. against the third accused/petitioner herein.

3. As pointed out by counsel for the revision petitioner, the Supreme Court in **Harjinder Singh v. State of Punjab, 1985 S.C.C.(Cri.)93** which was followed by this Court in **Mani v. Viswanathan, 1986 K.L.T.170** it has been held that clubbing

and consolidating two cases, one on a police charge and the other on complaint is not permissible if the prosecution version in the two cases are materially different, contradictory and mutually exclusive. It has been held that the proper course to adopt is that the two cases should be tried together, but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases can be examined in one case and their evidence be read as evidence in the other. After recording the evidence of the prosecution witnesses in one case the judgment should be withheld and the evidence of the prosecution in the other case should then be recorded. Thereafter both the cases should be disposed of simultaneously by two separate judgments taking care that the judgments in one case is not based on the evidence recorded in the other case. On an examination of the F.I.S. in C.C.No.129/2003 and the averments in the complaint in C.C.No.951/2004 it can be found that the allegations with respect to the incident are different. In the circumstances, the order of the court below clubbing and consolidating both the cases is set

aside. The court below is directed to follow the procedure laid down by the Supreme Court in **Harjinder Singh v. State of Punjab, (1985) 1 SCC.422** and dispose of the case on merits untrammelled by any of the observations contained in the order of this Court. The parties shall appear before the court below on 30-4-2007. The Crl.M.C. is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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